

Statutes
1878

THE
GENERAL STATUTES
OF THE
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY
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OF 1878, AND CHAPTER 67 OF THE LAWS OF 1879.

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WITH SUPPLEMENTS,
CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF
THE LEGISLATIVE SESSION OF 1883.

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CHAPTER LI.

ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

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§ 1. *Personal estate, how distributed.* When any person dies possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will and testament, the same shall be applied and distributed as follows:

First.—The widow, if any, shall be allowed: (1) all her articles of apparel and ornament, and all the wearing apparel of her deceased husband; (2.) his household furniture, to be selected by her, not exceeding in value five hundred dollars; (3) other personal property, to be selected by her, not exceeding in value three hundred dollars; and such allowances shall be made as well when the widow receives the provisions made for her in the will of her husband, as when he dies intestate.

Second.—The widow, or widow and children, constituting the family of the deceased, shall have such reasonable allowance out of the personal estate as the probate [court] deems necessary for her or their maintenance during the progress of the settlement of the estate, according to her or their circumstances, which, in the case of an insolvent estate, shall not be longer than one year after granting administration, nor in any case after the share of the widow in the residue of the personal estate, mentioned in subdivision sixth hereof, shall have been assigned to her.

Third.—When a person dies leaving children under the age of ten years, having no mother, or when the mother dies before the children arrive at the age of ten years, an allowance shall be made, for the necessary maintenance of such children until they arrive at the age of ten years, of such part of the personal estate as would have been allowed to their mother, if living; and in addition thereto such sum as the probate court deems necessary.

Fourth.—If, on the return of the inventory of any intestate estate, it appears that the value of the whole estate does not exceed the sum of three hundred dollars, the probate court shall, by a decree for that purpose, assign for the use and support of the widow, or widow and children, of such intestate, or for the support of the children under the age of ten years, if there be no widow, the whole of such estate, after the payment of the funeral charges, and expenses of administration.

See *post*, c. 53, § 2.

Fifth.—If the personal estate amounts to more than the allowances mentioned in the preceding subdivisions of this section, the excess thereof shall, after the payment of the funeral charges, and expenses of administration, be applied to the payment of the debts of the deceased.

Sixth.—The residue, if any, of the personal estate, shall be distributed in the same proportion, and to the same persons, and for the same purpose, as prescribed for the descent and disposition of real estate.

Seventh.—All of the foregoing provisions shall apply as well to a surviving husband as to a surviving wife or widow. (*As amended 1876, c. 42, § 1.*)

§ 2. *What probate court to have jurisdiction.* When any person dies intestate, being an inhabitant of this state, letters of administration of his estate shall be granted by the probate court of the county of which he was an inhabitant or resident at the time of his death. If such deceased person, at the time of death, resides in any other territory, state or country, leaving estate to be administered in this state, administration thereof shall be granted by the probate court of any county in which there is estate to be administered; and the administration first legally granted shall extend to all the estate of the deceased in this state, and exclude the jurisdiction of the probate court of every other county.

23 M. 24.

§ 3. *Who entitled to letters of administration.* Administration of the estate of a person dying intestate shall be granted to one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same in the following order:—

First. The widow, or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of kin may request to have appointed, if suitable and competent to discharge the trust.

Second. If the widow, or next of kin, or the person selected by them, is unsuitable or incompetent, or if the widow or next of kin neglects for thirty days after the death of the intestate to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it.

Third. If there is no such creditor competent and willing to take administration, the same may be committed to such other person as the judge of probate may think proper.

§ 4. *Administrator to give bond.* Every administrator, before he enters upon the execution of his trust, and before letters of administration are granted to him, shall give a bond to the judge of probate, with such sureties as he shall direct and approve, with the same conditions as required in case of an executor, with such variations only as are necessary to make it applicable to the case of an administrator.

21 M. 447.

§ 5. *Special administrator appointed, when.* When there is a delay in granting letters testamentary or of administration, occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the judge of probate may appoint an administrator to act in collecting and taking charge of the estate of the deceased, until the question on the allowance of the will, or such other question as occasions the delay, is terminated, and an executor or administrator is thereupon appointed; and no appeal shall be allowed from the appointment of such special administrator.

§ 6. *Powers and duties of special administrator.* An administrator appointed according to the provisions of the preceding section shall collect all the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator who may afterward be appointed; and for that purpose may commence and maintain actions as an administrator, and sell such perishable and other personal estate as the probate court may order to be sold.

§ 7. *Special administrator not liable for debts.* Such special administrator shall not be liable to an action by any creditor, or to be called upon in any other way to pay the debts against the deceased.

§ 8. *Special administrator to give bond.* Every such special administrator shall, before

entering upon the duties of his trust, give a bond to the judge of probate, in such sum as he shall direct, with a condition that he will make and return a true inventory of all the goods, chattels, rights, credits and effects of the deceased, which come to his possession or knowledge; and that he will truly account for all the goods, chattels, debts and effects of the deceased, which shall be received by him, whenever required by the probate court; and shall deliver the same to the person who shall afterward be appointed executor or administrator of the deceased, or to such other person as shall be legally authorized to receive the same.

§ 9. **Powers of special administrator cease, when.** Upon granting letters testamentary or of administration on the estate of the deceased, the power of such special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money or effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute to final judgment any action commenced by such special administrator.

§ 10. **Embezzlement, etc., before letters issue—penalty.** If any person, before the granting of letters testamentary or of administration, embezzles or alienates any of the moneys, goods, chattels or effects of any deceased person, such person shall stand chargeable, and be liable to the action of the executor or administrator of such estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of such estate.

§ 11. **Administration with will annexed.** When any sole executor or administrator dies without having fully administered the estate, the probate court may grant letters of administration with the will annexed, or otherwise, as the case may require, to some suitable person, to administer the goods and estate of the deceased not already administered.

§ 12. **Removal of administrator.** If an administrator resides out of this state, or neglects, after due notice by the judge of probate, to render his account, and to settle the estate according to law, or to perform any decree of said court, or absconds, or becomes insane, or otherwise unsuitable or incapable of discharging the trust, the probate court may remove such administrator.

§ 13. ^{4 M. 11 (25).} (SEC. 14.) **Execution of trust after removal, etc., of administrator.** When an administrator is removed, or his authority extinguished, the remaining administrator, if any, may execute the trust; if there is no other, the court of probate may commit administration of the estate not already administered, to some suitable person, as in case of the death of a sole administrator.

§ 14. (SEC. 15.) **Powers of administrator de bonis non.** An administrator appointed in the place of any former executor or administrator, for the purpose of administering the estate not already administered, has the same power, and shall proceed in settling the estate in the same manner, as the former executor or administrator had, or should have done; and may prosecute or defend any action commenced by or against the former executor or administrator, and have execution on any judgment recovered in the name of such former executor or administrator.

§ 15. (SEC. 16.) **First administration to be revoked on proving will.** If, after the granting of letters of administration by any probate court on the estate of any deceased person, as if he had died intestate, a will of such deceased person is duly proved and allowed by such court, the first administration shall, by decree of said court, be revoked, and the powers of the administrator cease; and he shall thereupon surrender his letters of administration into the probate court, and render an account of his administration, within such time as the court shall direct.

§ 16. (SEC. 17.) **Powers of executor in such cases.** The executor of the will, in such case, is entitled to demand, sue for and collect all the goods, chattels, rights and credits of the deceased remaining unadministered, and may be admitted

to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

§ 17. (SEC. 18.) Acts of executor, etc., before revocation of letters, valid. All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administration, are valid to all intents and purposes.

§ 18. (SEC. 19.) Joint or separate bonds may be taken. When two or more persons are appointed administrators on any estate, the judge of probate may take a joint or separate bond with sureties.

§ 19. (SEC. 20.) When application for administration—service on consul. When application is made to the judge of probate for the appointment of an administrator of an intestate estate, or for letters of administration with the will annexed, he shall cause notice of the same, and of the time and place of hearing thereof, to be published for three successive weeks in such newspaper as he shall direct; and when such application is made by any person, not the widow or of kin to the deceased, and the deceased was a native of any foreign country, the judge of probate shall cause such notice of the time and place of hearing such application to be served on the consul or other representative of the kingdom, state or country of which the deceased was a native, residing in the state of Minnesota, who may have filed a copy of his appointment as such consul or representative with the secretary of the state, by depositing a copy thereof in the post-office, postage paid, addressed to such consul or representative; and in case the kingdom, state or country of which deceased was a native, shall have no consul or representative in the state of Minnesota, then such notice shall be served as aforesaid on the secretary of state, and shall be by him forwarded to the representative of such kingdom, state or country at the city of Washington. (As amended 1871, c. 56, § 1.)

Ch. 51, *§ 20, and ch. 52, § 1. See 1881 Sup't, p. 91.

CHAPTER LII.

INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

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§ 1. Executor or administrator to make inventory. Every executor or administrator shall, within three months after his appointment, make and return into the probate court a true inventory of the real estate, and of all the goods, chattels, rights and credits of the deceased, which have come to his possession or knowledge; but an executor who is a residuary legatee, and has given bond to pay all the debts and legacies, as provided by law, shall not be required to return an inventory.

§ 2. Appraisers to be appointed and sworn. The estate and effects comprised in the inventory shall be appraised by two or more disinterested persons, appointed by